

THE HONORABLE RONALD B. LEIGHTON

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

JULIANNE PANAGACOS, ET AL.,) NO. 3:10-cv-5018 RBL
) PLAINTIFFS' MOTION TO STRIKE
) DEFENDANT COLVIN'S MOTION
) TO DISMISS PURSUANT TO
Plaintiffs,) NOTICE OF UNAVAILABILITY
)
v.)
)
JOHN J. TOWERY; THOMAS R. RUDD) Noted for October 22, 2010
CLINT COLVIN; CITY OF OLYMPIA)
TOR BJORNSTAD, et al.,)
)
Defendants.)
_____)

JULIANNE PANAGACOS, MALLORY HAGEL, STEPHANIE SNYDER, EMILY COX,
MOLLY PORTER, ANDREA ROBBINS, JULIA GARFIELD, ERAN RHODES, ELI
EVANS, CHRIS GRANDE, DAVI RIOS, BRENDAN DUNN, GLEN CRESPO, and

Panagacos v. Towery, et al-Plaintiffs Motion To Strike Defendant Colvin's Motion to Dismiss
LAWRENCE A. HILDES
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Attorney for Plaintiffs

JEFFERY BERRYHILL the Plaintiffs herein, by and through their attorney, hereby Move this court to strike Defendant Colvin's Motion to Dismiss or in the Alternative for Summary Judgment as follows:

On June 11, 2010, Plaintiffs filed a Notice of Unavailability for the period from September 19, 2010-October 5, 2010 due a conference in New Orleans at which counsel was presenting.

On September 14, 2010, Plaintiffs filed a second notice of unavailability reiterating those dates and adding additional periods, which specifically included October 11-25 as Plaintiffs' counsel is counsel on a series of Mountain Top Removal cases in West Virginia where in a 10 day period he has one West Virginia Supreme Court Argument, two discovery hearings, and a criminal trial, as well as numerous meetings and trial preparation and must be there during that period.

In spite of Plaintiffs timely filing of these notices, on September 29, 2010, during the period of unavailability that Plaintiffs had noticed in June, Defendant Clint Colvin filed a series of pleadings including a request for leave to file a brief 18 pages over the limit, and then a 41 page motion to dismiss with an additional nine page table of contents not required or allowed in this District, and an improperly attached 10 page declaration with four exhibits, noted for hearing on October 22, 2010.

Counsel, who generally did not have access to e-mail while in New Orleans received the motion, and Defendant Colvin's other pleadings and notices as per his notice of unavailability, on October 5, 2010. Given his schedule, that would give him 3 ½ days to respond to an extremely complex motion. Plaintiffs' copounsel is a sole

practitioner, who is in the process of attempting to bring in co-counsel on this matter, but has not yet been able to do so. This creates exactly the situation that notices of unavailability were created to prevent, and causes extreme prejudice to Plaintiffs.

Plaintiffs' counsel's notices of unavailability were properly filed electronically, thus putting all Defendants on notice of them and the included dates.

There was no urgency at that time for Defendant Colvin to file a motion, and none of the other Federal Defendants have, as yet filed an answer or responsive pleading.

For all of the above reasons, Defendant Colvin's Motion to dismiss or in the alternative for summary judgment should be struck.

In the alternative, if the court is not inclined to strike Defendant Colvin's motion, Plaintiffs ask for an extension of 30 days from the current noting date of October 22, 2010, so that they may have sufficient time to respond to this complex pleading which involves issues of first impression.

Respectfully Submitted: October 6, 2010

/S/

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PROOF OF SERVICE

Lawrence A. Hildes certifies as follows:

I am over the age of 18 years, and not a party to this action. I am a citizen of the United States.

My business address is P.O. Box 5405, Bellingham, WA 98227

On October 6, 2010, I served the following documents(s) described as follows

PLAINTIFFS' MOTION TO STRIKE DEFENDANT COLVIN'S MOTION TO DISMISS
on the following persons(s) in this action at the following addresses:

Michael D McKay mdm@mckay-chadwell.com, hgr@mckay-chadwell.com, Imm@mckay-chadwell.com,
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☐ (BY FIRST CLASS MAIL) by placing a true copy of the above documents in a sealed
envelope with postage fully prepaid in the mail at Bellingham, WA, addressed to the person(s)
above at the above address

☒ By electronically serving, by filing an electronic copy with the court in such a way that
notice will be sent to counsel for Defendant

☒ (FEDERAL) I declare under penalty of perjury that I am a member of the BAR of this court,
and that the above information is true and correct.

Executed on October 6, 2010, at Bellingham, Washington.

_____/S/
Lawrence A. Hildes

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